



Age Disputes Project: End of Year Report 2017/18



**SUPPORTING AND
EMPOWERING
REFUGEES**



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Cover image: Artwork created by children in the Youth Development Project

THE REFUGEE COUNCIL CHILDREN'S SECTION

At the Refugee Council Children's Section, our priority is to act in the best interests of the young people we support through our services, by providing assistance with everything from navigating the intricacies of the asylum process to organising social activities to helping children and young people settle into life in the UK. We do this through direct service delivery by the Children's Panel, the Trafficked Girls' and Boys' Project, the Youth Development Project and the Age Disputes Project.

About the Age Disputes Project

The Age Disputes Project (ADP) provides advice and support to unaccompanied children seeking asylum who are judged to be over 18 by the Home Office and/or by the local authority, and are thereby treated as such during the process of their asylum claim and in relation to their support. Advisers from the Age Disputes Project work to ensure that young people have access to the support they are entitled to as children under UK law. This means ensuring that an individual who is under 18 is recognised as such by the authorities, and can involve challenging what sometimes appear to be arbitrary and highly subjective decisions made about an individual's age.

Unaccompanied children arriving in the UK are placed in the care of a local authority, who become responsible for their wellbeing under the Children Act (1989), irrespective of their status¹. It is essential that the support and protection offered by local authority care is provided to all these children.

We work with an increasing number of unaccompanied children who have been processed, housed and even in some cases detained alongside other adults, because they are deemed by the Home Office to be 'significantly over 18'. This puts vulnerable young people, who have travelled without their family to escape a traumatic experience in their home country, at greater risk here and at greater risk of removal on their own from the UK.

The Age Disputes Project was created in 2010 to respond to concerns regarding the number of unaccompanied children who were being detained, and our focus was on securing the release of children

from detention. Following our successful involvement in a number of challenges, and in policy work, the number of age disputed young people in detention has reduced significantly in the last few years. However, the ADP has found that this reduction is offset by a dramatic increase in the number of young people being deemed to be 'significantly over 18' by Home Office decision makers and being sent to Initial Accommodation (IA)² alongside adults.

Since its creation, it has been part of the Age Disputes Project's mission to support unaccompanied young people who arrive in the UK seeking asylum, and are disbelieved about their age. Our Advisers challenge decisions which we believe to have been made in error, or where proper procedure has not been followed, to ensure that the young people we work with are treated fairly and where their age is uncertain they are given the benefit of the doubt in line with government policy and judicial rulings. A recent update to guidance from the European Asylum Support Office (EASO) insists that during an age dispute process, the individual claiming to be a child should be treated as such pending the outcome of the case³. Accordingly, if a young person claims to be a child and their age is uncertain, they should be treated as a child until there is sufficient evidence or information to finalise a lawful decision on their age.

Staff and volunteers on the Project have the experience and expertise to provide advice and to advocate on behalf of young people faced with an immensely distressing situation and a potentially unsafe environment.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/656429/UASC_Statutory_Guidance_2017.pdf

²Initial Accommodation is provided by the Home Office for single adults and families who are seeking asylum.

³<https://www.easo.europa.eu/sites/default/files/easo-practical-guide-on-age-assessment-v3-2018.pdf>

"My age was 17 years old and they said you are not a child, and they put me with adults. The Age Disputes Project supported me, they brought me back to Social Services and helped me get my age accepted."
[Young person]

Why do age disputes occur?

Assessing age can be a very subjective process. There are occasions when there is sufficient documentary evidence on which decision makers can rely, which allows them to come to a definitive conclusion about age. However, in almost all cases such documentary information is not available and other tools must be used. In these scenarios age cannot be determined by a single method⁴, and a decision on an individual's age must be undertaken as holistically as possible.

Age is something most of us would never think to question in our own lives in the UK. However, for unaccompanied children, the question of their age can often become the most pressing and threatening issue in their lives. There are many reasons that a person's given age may be called into question, and many reasons that they may not be able to prove their age beyond their testimony. Reasons include;

The concept of age – concepts of age, childhood and adulthood are not universal, and it is important to remember that how we measure age does not apply to all countries and cultures. Some cultures do not celebrate birthdays, and even where age is significant in the passage to adulthood, 'birth' day is not always considered in the same way. For example, in some parts of Asia, children are considered to be into their first year when born and will refer to themselves as a year older than we would in the UK.

Dates and calendars - not all countries use the same calendar and converting between calendars can result in the wrong date of birth being ascribed. This is of particular significance in decisions on age where the decision maker is not familiar with such cultural differences.

Appearance – physical appearance cannot be relied upon to accurately determine age, and people develop and reach puberty at different ages. Any classroom of pupils in a British school will clearly demonstrate how children of the same chronological age can be significantly different in physical size and development. Additionally, the experiences and environments to which people are exposed as they grow can have an impact on physical appearance, and make an individual act or appear older or younger than they are.

Documentation – after long and traumatic journeys, people may not have documentation to prove their age or their identity. Not all countries have a process for documenting or recording dates of birth in the way we take for granted in the UK. People who have fled their home countries may have left documents behind or lost them, or they may have been destroyed. They may have been provided with travel documents which display false dates of birth. This is particularly significant in cases of modern slavery when traffickers may use adult identities to hide the fact that they are exploiting children. Children may knowingly or unknowingly give different information to authorities at different times during the journey for a variety of reasons. All of this means that once an individual arrives in the UK and claims to be a child, documentation can seem to contradict their age claim, making it difficult to prove or disprove a person's age.

⁴<https://www.rcpch.ac.uk/improving-child-health/child-protection/refugee-and-unaccompanied-asylum-seeking-children-and-youn-3>

Why is the Age Disputes Project needed?

Since the last report in 2014, the Age Disputes Project has supported 424 children who were believed to be adult⁵.

The Age Disputes Project is very much needed, and not just because of the increase in the number of age assessments and age disputes. Looking beyond the statistics, our Advisers play a vital role in keeping the young person they help informed of what is happening, and treating them as an individual human being with their own unique experiences, understanding and fears. Whilst Advisers can act on behalf of the young person, act as their appropriate adult and provide advice on decisions, they are ultimately there to advise on the UK system, its laws and its processes. They can inform the young person of the choices they are faced with, and properly explain to them the likely consequences of these choices in order that the young person is able to make an informed decision. Advisers are careful not to make promises, only to provide knowledge, guidance and support.

When a young person arrives unaccompanied in the UK, they will often be interviewed and questioned about their age and background immediately upon or very soon after arrival, with little or no explanation of the systems or the potential impact of their responses. Advisers at the Age Disputes Project, in line with the wider values of the Children's Section and the Refugee Council, always act in the best interests of the young person. By working with young people and ensuring they are aware of what is happening, a certain degree of control and autonomy over their situation is restored, and they are empowered to make informed decisions about their case as it progresses.

Whilst in some cases adults will claim to be children, there is increasing evidence of poor decisions on age being made without sufficient reason, with age assessment interviews being conducted improperly or without grounds for doubting the individual's claimed age. Our concerns are reflected in the number of young people who the Age Disputes Project has supported in recent years who have ultimately been accepted as children.

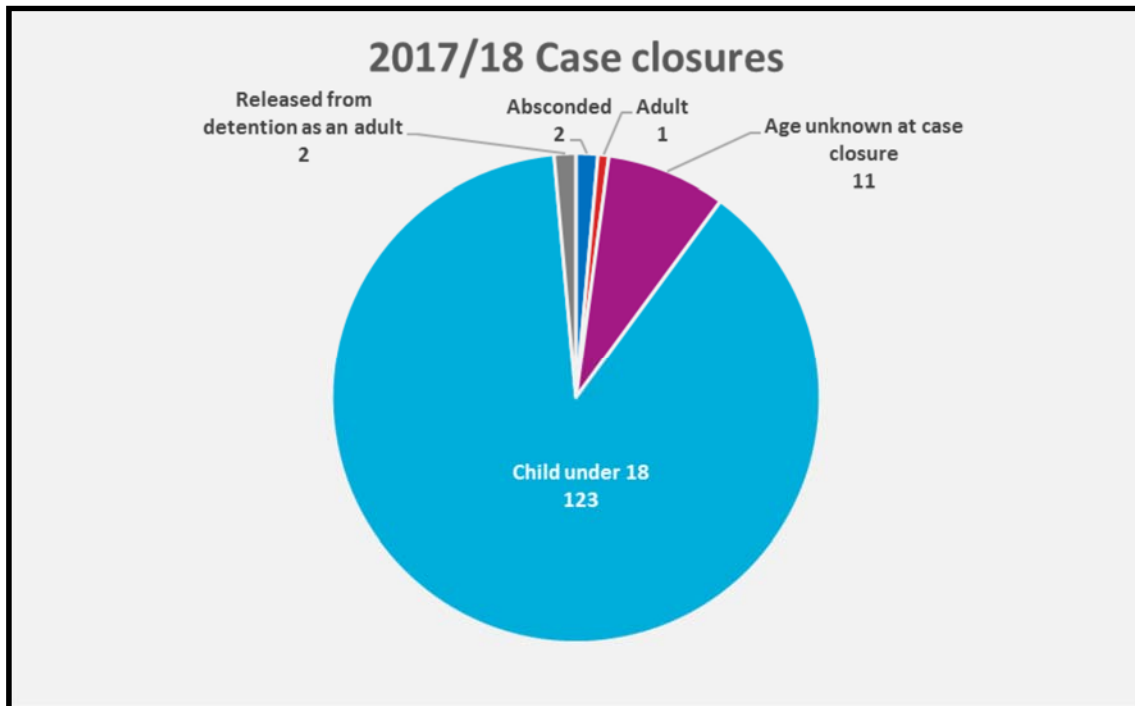
"From the commencement of the claim, the Refugee Council acts as a crucial point of contact to advise on the child's best interests and to guide the preparation of evidence."

[Barrister]

⁵110 children in 2015, 142 children in 2016/17, and 172 children in 2017/18, Refugee Council Statistics January 2015 – March 2018.

"The work of the Age Disputes Project is vital as it provides clients with the means to challenge decisions and gives them access to lawyers who specialise in age dispute cases."

[Solicitor]



As the chart above shows, of the 139 closed cases in 2017/18, 123 (88%) of the young people we supported were assessed to be children. The 'Child under 18' category indicates cases where the client had significant evidence to show they were under 18, and their claimed age was accepted. The 'Age unknown at case closure' category indicates that a case was closed before a final decision on age was reached which could be for several reasons, including; lack of contact with the young person, insufficient evidence to challenge the decision, or the young person no longer wanting to challenge the decision. These figures suggest significant errors in initial decisions. We only take on cases when

we believe the individual may be under 18, and where we are confident that our involvement will help the young person, and the steadily increasing volume of cases the Age Disputes Project supports indicates the growing need to challenge decisions being made about age.

While we are receiving increasing numbers of referrals, there will be young people across the country who are not aware of the service so we can only presume that some children are treated as adults and consequently have little opportunity to seek or access support in this matter.

What we do

The majority of the young people we support at the Children's Section have fled from life-threatening situations in their home country, and arrive in the UK alone after a journey filled with uncertainty, hardships and fear. Young people may be sent away by parents or, in their absence, another relative who fears for their safety, and are smuggled to the UK, or they may have become separated from their family members en route.

Young people rarely arrive with reliable formal means of identification, and sometimes the only means of ascertaining their age, and therefore their right to support under the Children Act 1989, is their testimony. If this is doubted then children are often assessed as adults, and considered as such throughout the immigration process. A young person's claimed age can be challenged at almost any stage from their immediate arrival in the UK, up to and including having been initially accepted as a child and placed into care. The Age Disputes Project will support young people whose claimed age is not believed, and will ensure as far as possible that they are treated as a child until a decision is made. In 2017/18, we were able to support 61% of the referrals we received.

When a referral is made to the Age Disputes Project, the Advisers will look at any documentation provided by the young person and/or by the authorities here and any other information available, and more importantly will meet with the young person and listen to their story in order to ascertain whether we are able to support them. The support provided by the Age Disputes Project is multifaceted and each referral is treated as unique in order to best meet the needs of that young person. When we take on a new client, we support them through to the conclusion of their age dispute case wherever possible, and ensure that they are referred to relevant support services, whether this is in another part of the Children's Section or with another

organisation, in order that they have the assistance they need to settle into life in the UK.

Our Advisers always aim to meet young people face-to-face before proceeding to support their case. In Wakefield, as part of the Age Disputes Project in Leeds, our Advisers run a drop-in session once a week at Initial Accommodation, for anyone who feels that they may need the service. There, our Advisers are able to meet the young person, listen to their story, and assess whether they would benefit from our services. Whilst not every individual receives our support, this option of self-referral has been key in identifying cases that otherwise would not come to our attention. An initial meeting is also important as without this, Advisers would not be able to gather vital information and find it much harder to establish their own view of the young person's likely age.

In cases where no local authority age assessment has taken place because the Home Office has decided that the young person is 'significantly over the age of 18', the Age Dispute Advisers will help arrange an assessment with the local authority. In most cases they will arrange for themselves or colleagues from another team to accompany the young person to the appointment, and will ensure that the assessment is conducted lawfully, and that the young person's wellbeing is considered throughout the process.

Where possible, the Project will resolve cases without recourse to legal advice. This can entail clear and frequent communication with local authorities and other agencies, about an individual and about wider issues of law, policy and practice. Where a young person's position cannot be resolved safely in this manner the Project will advise them of their options and, assuming that they wish to pursue the matter, we will assist them in seeking legal advice. Our extensive knowledge and experience means that we have good professional relationships with a number of solicitors and barristers. We will work to ensure that the best available legal professionals are engaged.

Once a solicitor is engaged the young person requires a litigation friend to act on their behalf, a role which the Project frequently undertakes. This requires the Project staff to direct the proceedings on behalf of the young person, to make decisions in their best interests, to do everything possible to continue to ascertain their wishes and feelings, and to maintain frequent and clear communication with the solicitor and give the solicitor clear instructions on the case. We are also liable for any costs ordered by the court.

Acting as litigation friend in these cases is a very serious undertaking. Some of the legal professionals we work with are very experienced in this field and our role is to act as a conduit between the young person and the various professionals involved, giving instructions as described above. When the Project works with legal actors who are less experienced the role of the Project staff is even broader, and often entails bringing relevant caselaw and policy to their attention and advising them of previous litigation in which we have been involved.

In addition to direct support concerning the issue of their age, we work where possible to ensure that young people receive appropriate social and pastoral support by referring them to appropriate

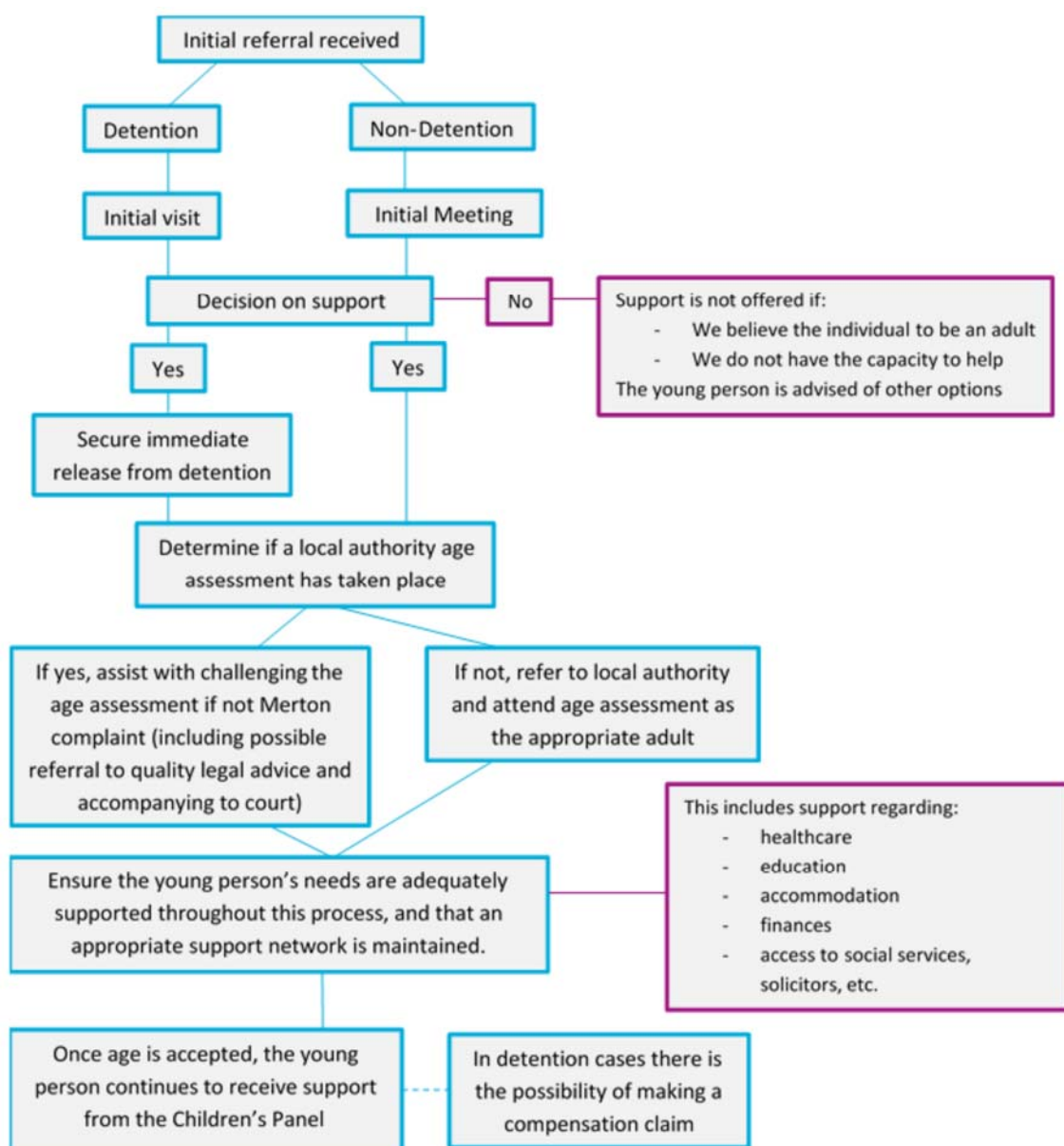
organisations. A significant part of the Adviser's role is to ensure that the welfare of the young person is considered throughout the process, and this encompasses many practicalities, including;

- Arranging for a young person to be immediately transferred to appropriate accommodation if they have previously been placed in adult Initial Accommodation or Immigration Removal Centres
- Regularly checking on the young person's welfare; that they have access to clothes, food, healthcare and education
- Acting as the young person's appropriate adult during appointments, which includes ensuring that during interviews there are regular breaks, and calling a stop to proceedings if they become too stressful
- Listening to any concerns or issues the young person may have, and supporting them in resolving these issues or referring them to an appropriate support service
- Supporting the young person in preparing documents for interview or for court, and advising them on the process

An important aspect of this process is that our Advisers communicate consistently with the young person, and keep them informed of each stage of the process, in order to respect their agency and the experiences they are going through. The nature of being disbelieved about your age upon arriving in a new country can be incredibly damaging, and in spite of the often harrowing circumstances of home and the journey, it can be the nature of what happens on arrival - shattering the idea of safety and refuge - which does the greatest harm⁶. The Project also aims to provide

emotional and practical guidance, to ensure that children are able to rebuild their lives and fulfil their potential.

The flowchart below outlines the main steps in the process of supporting someone through an age dispute case. Of course, there are many more complexities unique to each case and these can result in the duration of a case varying greatly, which in turn has a significant impact on the Project's capacity to take on new cases.



⁶https://www.refugeecouncil.org.uk/latest/blogs/4678_the_forgotten_children

LINH'S STORY*

Linh was trafficked into the UK, and upon arrival she was discovered by the police in the back of a lorry. She was 15 years old. Social services were called and she was placed with a foster family. It turned out that Linh was five months pregnant. She told medical staff and her allocated social worker that the pregnancy was the result of numerous sexual assaults, including rape, by the traffickers during the journey.

During a meeting Linh thought that her social worker was implying that if she, Linh, was an adult, over 18 years old, she would get financial support for herself and the baby; if she was under 18 years old, so a child herself, there was a possibility that her baby might be taken away from her. Linh was terrified of losing her baby and so she told her social worker that she was 19 years old. Her social worker asked her why she had previously said that she was 15, and Linh said that this was because the traffickers had advised her to do so; she said this to stop the authorities from taking her baby away.

Linh was sent as an adult to Initial Accommodation where she attended a drop-in service for age disputed young people, run by the Refugee Council. Linh told the Adviser that she was 15, but that she had said that if being 15 meant that her baby would be taken away from her, she would say she was 19. She was scared that she would be separated from her child. A referral was made to social services, requesting that they take Linh into care and arrange for an age assessment. They took some time to decide what to do, as they believed that the previous local authority was responsible for her, having dealt with her before, even though there hadn't been a full age assessment from that area which could be challenged.

While a decision was being made, Linh lived on her own in adult asylum support accommodation. The Age Dispute Adviser made another referral to social services, asking them to assess and support Linh. The medical staff from a health centre that Linh attended for advice about her pregnancy also made a referral to social services, as Linh told them she was 15 years old. The manager of the Looked After Children Team made it clear that they believed that their responsibility was for the unborn child but not for Linh, as she was being treated as an adult. As another local authority had previously dealt with her age, social services would not assess her age and would not take Linh into care.

Linh was confused and frightened. While trying to recover from the abuse she had endured before reaching the UK she was now grappling with the difficult issue of her age, and there was the concern that she had been trafficked and that she might be at further risk. She sought further help to cope with her situation. Other organisations were unable to help her as their services were for adults. She was being treated as an adult but continued to say that she was a child; she was caught between services and was not getting the help she desperately needed.

*in all case studies, names and places have been altered to protect the identity of the young person.

LINH'S STORY CTD.

The Age Dispute Adviser knew that Linh was mistrustful of men as a result of her experiences and that she had previously asked for a female immigration solicitor. So when social services said that a male social worker had been allocated to Linh's unborn baby, the Adviser made a request for a female social worker to be allocated instead. The social worker had to assess Linh's ability to take care of her baby. Considering Linh's history, she would find it very hard to build up trust and to fully co-operate with a male social worker.

The Age Dispute Adviser and Linh's immigration solicitor organised a meeting with Linh to explain the different options to her again. The solicitor explained the impact of her age on her asylum case, while the Adviser explained the different possibilities regarding the age issue:

- i. Accept being treated as an adult and take the support she can get for the baby, or
- ii. Challenge the original decision of age made by social services and ask the local authority to take her back into care pending a full assessment. The outcome of a full assessment could be that her claimed age is accepted and she will be looked after, or she could be assessed as being over 18 years old and be sent back into the system for adult asylum seekers.

The second option would mean that Linh would go through the process of an age assessment, not knowing what the outcome would be. Linh was then seven months pregnant.

She said she was a child, and that she needed help for herself and her baby, so she took the decision to challenge the decision about her age. She said she would tell her real story, that she was 15 and not 19, and explain why she had given a different age. With the support and careful guidance of the Age Dispute Adviser and the solicitor, Linh decided to challenge the original decision made about her age, which she had previously been too scared to do as she did not have enough support. She had been living on her own for six weeks in adult accommodation and realised how hard it would be for her to support herself and her baby at the age of 15. A welfare solicitor sent a letter before action to social services, which resulted in Linh being taken into care. She went through a lawful age assessment and was assessed to be 15 years old.

Linh now lives in a foster family and has given birth to a baby boy.

Without the intervention of the Refugee Council, Linh would not be getting the support she and her baby son need to feel safe and to do the best they can in very difficult circumstances.

PROGRESS AND DEVELOPMENT

In our previous report covering January to December 2014, we recorded that we had supported 55 young people, with 31 more having already been taken on in 2015 at the time of writing. The number of age-disputed young people, and the volume of age assessments taking place, has increased dramatically in just a few years, despite numbers of asylum applications from unaccompanied children actually decreasing between 2016 and 2017⁷. In 2017/18 we received 283 referrals of age disputed young people, of which we are supporting 172 individuals.

To date, the Project has received almost 1,250 referrals, of which we have supported 720 young people in their age dispute cases. Of these, 44% are from 2016 and 2017, echoing the increasing number of referrals we receive.

This increase is worrying as it means a growing number of young people are being disbelieved about their age. There needs to be further research into the causes of this, but an initial look at the Project data and the experiences of the Age Dispute Advisers suggest that in many cases a decision is being made upon arrival purely based on appearance, and that no proper age assessment is taking place, or an age assessment does take place but is conducted poorly, and without proper understanding of the potential impact on the young person in question. This points towards improper use of the age assessment process, and a growing number of 'mistakes' being made. In much of the work that we do, our Advisers are able to successfully challenge the initial decision and the young person's claimed age is later accepted.

Policy

In addition to providing direct support to young people through the process of challenging age disputes, the Age Disputes Project has also been successful in advocating for changes to policy, either through judgements in court cases or by putting pressure on policy makers to develop fairer and more protective practices. Ensuring that the age of each newly arrived young people is properly assessed where there is sufficient doubt about their age is an ongoing challenge, but the Project has had several notable successes in recent years which have resulted in policy change and further recognition of the importance of proper safeguards in the assessment of age.

The 'S v LB Croydon' judgement of 2017⁸ concluded that local authorities must treat young people whose age is disputed as children whilst a lawful age assessment is undertaken, thereby applying the principle of benefit of the doubt and meaning that local authorities are obliged to provide accommodation and support under Section 17 and Section 20 of the Children Act 1989. This judgement is having a positive impact on the treatment of young asylum seekers, and we believe in turn is making a difference to the mental and physical health and wellbeing of young people navigating the asylum system. Some local authorities remain concerned about the potential for child safeguarding issues, which could arise from adults claiming to be children and then being placed with children whilst the benefit of the doubt is applied. Whilst this is a legitimate concern, the provision of suitable accommodation for children and young people with a range of backgrounds and vulnerabilities is always a challenge which local authorities must tackle, and the risks to children who are looked after by the local authority can be managed whereas the significant risks to children who are wrongly treated as adults are not.

⁷https://www.refugeecouncil.org.uk/assets/0004/2701/Children_in_the_Asylum_System_Feb_2018.pdf

⁸<http://www.bailii.org/ew/cases/EWHC/Admin/2017/265.html>

"The tailored support provided by Refugee Council staff is at its core focused on the wellbeing of the child"

[Barrister]

The wider influence of cases seen through to a successful conclusion in court by our Advisers is evident in the improvements subsequently made to Home Office guidance and policy on Assessing Age⁹ and in the statutory guidance for the care of migrant unaccompanied children¹⁰, for example in the stricter guidance surrounding the age assessment itself, in the recognition that children's claims should be listened to and in continuing to reinforce that the law should seek to protect children from harm¹¹. In both cases we were able to use these cases and the work of the Age Disputes Project to press for changes to the guidance before it was published. However, at the Children's Section we still believe that policies can be further improved to ensure that adequate safeguards are in place to protect children and we continue to work to influence policy.

For example, although a person must be deemed 'significantly' over 18 in order to be processed as an adult, we still see very many cases where this decision appears to be flawed and there is little evidence to disprove the individual's claim to be a child.

As the revised Home Office age assessment guidance has been published during the writing of this report, it is too early to tell whether the positive changes included within the guidance will have a practical impact on the nature and number of referrals.

Medical Assessments

Several of the Age Disputes Project's cases which went to court in 2016¹² had a significant impact on the use of dental evidence in assessing age. Its reliability was examined during these cases and resulted in updates in guidance and practice among local authorities after the courts stated that dental x-ray is by no means an accurate, reliable, or proven method of determining age. A case brought to court in 2017 again scrutinised the use of dental assessments similar to those relied upon in the previous cases. Once again it was determined that dental assessments are a flawed means of determining age, and we hope that this consistency in judgement will put an end to the use of unreliable and intrusive tests in age assessments. We all hope for advances which allow for more accurate and reliable medical assessment pertinent to age but these are not currently available in the UK or elsewhere.

⁹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/683907/assessing

¹⁰<https://www.gov.uk/government/publications/care-of-unaccompanied-and-trafficked-children>

¹¹<https://www.refugeecouncil.org.uk/latest/>

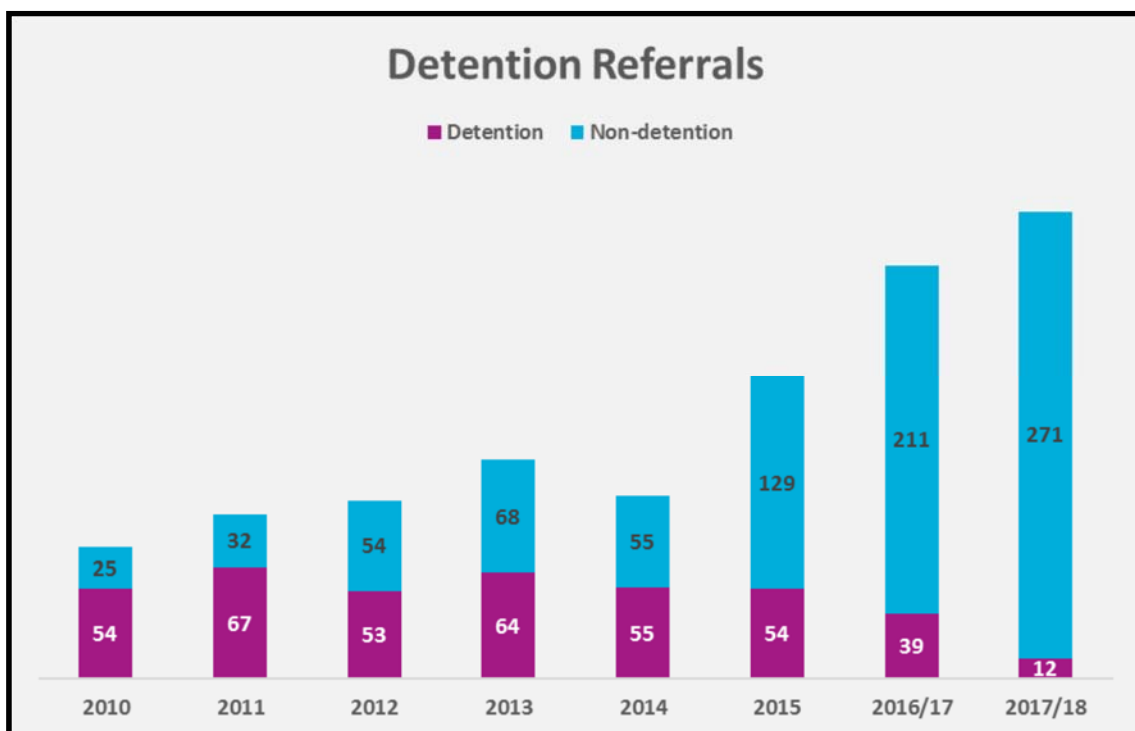
¹²[news/5058-refugee-council-welcomes-government-s-safeguarding-strategy-for-unaccompanied-children](https://www.refugeecouncil.org.uk/latest/news/5058-refugee-council-welcomes-government-s-safeguarding-strategy-for-unaccompanied-children)

¹²ZM & SK v Croydon London Borough Council (JR 2567/2016 & 3414/2016); R (on the application of ZM and SK) v The London Borough of Croydon (Dental age assessment) [2016] UKUT 559 (IAC)

Detention

At the outset of the Age Disputes Project, its main aim was to eradicate the unlawful detention of children. When the Project started in 2010, 54 out of 79 young people referred to the Project were held in detention, and earlier reports detailed the age and locations of these cases. Since our report in 2014, although detention of unaccompanied

children has not ended, there has been a significant decrease in the referrals we receive from young people in Immigration Removal Centres. In the period from January – March 2018, only one referral was from a young person in detention. We consider this to be a positive step and a success in itself.



Progress in reducing detention continues to be made as age dispute cases are judged in favour of the young person, leading in turn to developments in recommendations. The Project had assisted individual young people in challenging detention but in a case known as 'AA' the legality of Home Office policy was challenged and ruled unlawful by judges in the Administrative court¹³. The judgment, upheld in the Court of

Appeal¹⁴, ruled that as age is a matter of objective fact, it would be unlawful to detain a child other than in the very limited circumstances in which detention of unaccompanied children is lawful, even if the Immigration Officer had reason to believe the individual to be adult. This change in caselaw has helped secure the immediate release of children who have been placed in detention as 'adults'.

¹³<http://www.bailii.org/ew/cases/EWHC/Admin/2016/1453.html>

¹⁴<http://www.bailii.org/ew/cases/EWCA/Civ/2017/138.html>

"I feel very happy because they helped me a lot...when my age was being disputed they gave me English and Maths lessons and helped me to enrol in school."

[Young person]

The Home Office updated guidance for their own staff and the changes reflect the progress made in this area. Decision makers are instructed to have regard to the 'AA' ruling which states that if a claimant detained as an adult is later ruled to be a child then the detention was unlawful and the Home Office may well be liable to pay damages to the claimant for the period they were unlawfully detained¹⁵. The policy also includes important guidance for decision makers about the dangers of detention of children:

- such a period of detention can have a significant and negative impact on a child's mental or physical health and development
- detention can be extremely frightening for a child, with their perception of what they might experience potentially informed by previous negative experiences of detention suffered by themselves or by people they know, in their country of origin or during their journey to the UK
- if they believe themselves to be a child, the effect of not being believed by the Home Office and, consequently, being detained, can be very stressful and demoralising
- the serious safeguarding risks of detaining unaccompanied children alongside adults

Whilst we want to see a complete end to the detention of unaccompanied children, we recognise that the reduction in the number of children and young people being detained marks a significant step forward, and we hope this continues. Changes to Home Office policy have had a visible impact. However, the fact that young people considered to be adults by the Home Office are instead sent to Initial Accommodation alongside adults remains a serious concern.



¹⁵https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/683907/assessing-age-v1.0ext.pdf p.9

Project Expansion

It is very clear that the need for the Age Disputes Project continues to grow, and in order to respond to this growing demand for support in age dispute cases, the Project has expanded from its initial base in London into other areas of the UK. The Project now has part-time Age Dispute Advisers in Leeds and Birmingham, as well as continued volunteer support in Leeds. This expansion helps to support the growth in caseload and helps us respond to the needs of children across larger areas of the country. In 2017/18, our Advisers took on 172 cases – of which 48% were supported by the Croydon Office, 28% by the Leeds Office and 24% by the Birmingham Office¹⁶.

The development of the service in other regions has been important for several reasons. Firstly, it helps the Project respond to demand for support in age dispute cases, and spreads the workload across the Project so that our Advisers can continue to deliver a high-quality service to more clients, and can use their knowledge and experience to act in the best interests of the young people we support, wherever they are. It also allows us to build strong and trusting relationships with other services in the area, including accommodation services, local authorities, and other organisations which offer support to asylum seekers and young people. This is important not only in building the reputation and awareness of the Age Disputes Project, but also in ensuring that other services which encounter age dispute cases are able to make a referral to the Project so that young people can receive the support they need. It also gives us a greater opportunity to build good relationships with young people using our services, and restore some level of trust. For this reason, Advisers will continue to work with young people even if they are moved to different accommodation in another area of the country; another benefit of having more Advisers nationwide.

"Without the expertise of ADP staff, many young people would not be referred to appropriate legal advisers and may not therefore be able to challenge an unlawful age assessment"
[Barrister]

Age dispute cases do not always arise at the immediate point of entry to the UK, and can be raised by the Home Office, a local authority or others during the asylum process. This means cases which are referred to the Age Disputes Project are located across the entire country. Age disputes raised by the Home Office do occur more frequently at entry ports, and there is currently a higher prevalence of age dispute cases in areas such as Croydon and the West Midlands. These are often based on a judgement of initial appearance or a lack of documentation. Disputes raised by local authorities responsible for the young person similarly occur across the country, however these cases are more evenly dispersed. All of the cases we support are channelled through one of our offices, meaning that our Advisers will often travel across the country to meet with clients.

Whilst a higher proportion of young people are assisted through our office in Croydon, it is clear that this is a national issue and therefore the development of the Age Disputes Project outside of London has been vital in meeting this very real need.

¹⁶ Refugee council data, based on the geographic dispersal of supported cases at the time of writing.

Resources

The process of supporting a young person through an age dispute case is rarely simple, and there is no single process to follow as each case is unique. A simple case is often one where procedure has clearly not been followed, as a request for assessment or reassessment in these circumstances can be relatively straightforward. However, the Adviser will still work closely with the young person to support them holistically and ensure they are able to access the services they need. They will liaise with local authorities and solicitors to ensure this happens, and will keep the young person informed on the progress of their case. They will help them fill out paperwork, advise them on the process, and accompany them to appointments. In cases where translation is needed, an interpreter will be engaged either on the phone or in person. The Adviser will also make sure that the details of the case are accurately logged in order that case management and progress is clear, and that we can build an accurate picture of where, how and why the services of the Age Disputes Project are needed.

In a more complex case, the Adviser will help gather evidence to support a case, and in addition to the solicitor will support the young person in preparing for court. They will attend court and may be a witness, preparing statements and being examined by all parties, including the judge(s), at hearings which often last up to three days. Pending the outcome of the hearing they will continue to contact and support the young person. This process can be very lengthy, with some cases continuing for months or longer, and can re-traumatise the young person involved by making them relive

their experiences. If it could be ensured that age assessments were complaint with current guidance, that proper processes were followed and respected, and that the young person's testimony was at least listened to, it would help reduce the number of disputes and therefore the instances of going to court.

Considering the potential for each case to develop with the complexity described above, and that the Project is run and supported by three members of staff (two of whom are part-time) and one volunteer, it is not surprising that the number of referrals the team are unable to support is increasing. One response to this would be to increase the resources of the Project. The alternative option to increasing service provision to meet demand is to tackle the source of the issue; where errors in decisions on age are being made. Whilst the policy and guidance changes described above are indeed positive steps, the effect of such changes in the number of referrals is yet to be seen. Referrals continue to rise whilst the capacity of the Age Disputes Project to support this increase does not.

"The support of the Age Disputes Project was 100% good and they helped me with everything."

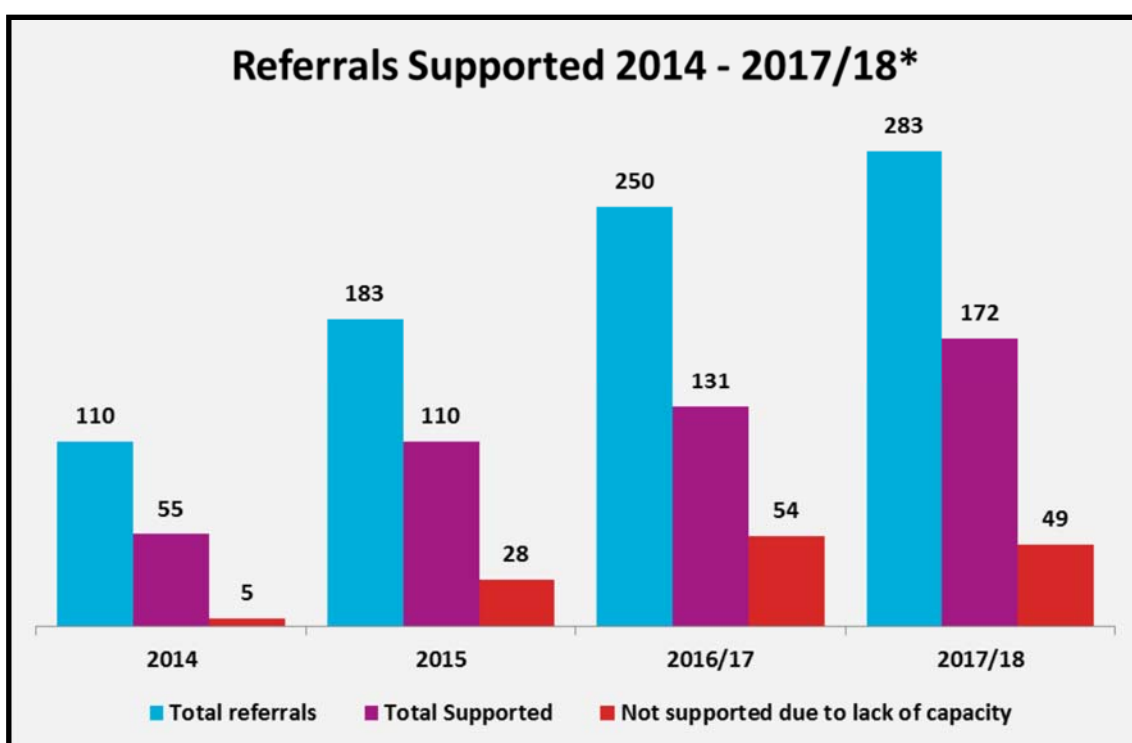
[Young person]

"As a barrister who works on judicial review challenges to local authority age assessments, I have seen first-hand the invaluable support that the Refugee Council's Age Disputes Project provides to vulnerable young people who are dealing with an unfamiliar and intimidating judicial processes."

[Barrister]

The table below illustrates that not only is the Project receiving an increasing number of referrals, but that it is reaching the limits of its resource and the capacity it has to offer support. In 2017/18, of the cases referred to the Project, we did not have capacity to support 49 young people whose claimed age had been disbelieved. As we are one of the only providers of such support in

the UK, and are by far the biggest, the young people we cannot help often have nowhere else to turn, and end up not receiving support they desperately need. The gap between need and capacity has grown in recent years, and without additional resource the Project will not be able to support a growing number of young people in need.



*reporting changed from annual (January – January) to financial year (April – March) from 2016

ASADI'S STORY*

Asadi travelled from Afghanistan to the UK after he witnessed the death of his father and other family members at the hands of the Taliban, and his mother paid with what she could for Asadi to escape the regime which had taken over large parts of their home country. He was 14 at the time.

He travelled for months whilst trying to come to terms with the loss of his family in addition to the uncertainty of not knowing where he was going or what his future might hold. He declared his age upon arrival in the UK and was placed in the care of social services under Section 20 of the Children Act 1989. However, shortly after this Asadi was assessed as an adult by social services, and was transferred to adult accommodation. He reported feeling alone and very isolated, he was afraid to be living with adults who he did not know and was highly distressed about his age matter.

Asadi was soon referred to the Refugee Council. However at that time the Age Disputes Project had not been established where he was living, and little could be done to help Asadi in challenging the decision that he was an adult. It was clear that he was a very vulnerable young person in need of support, and the Refugee Council agreed to support him. Asadi was relocated again, fortunately this time to an area where the Age Disputes Project had a presence, and he was immediately referred to us. The Project Adviser was able to help him challenge the decision of the local authority concerning his age.

In order to help Asadi's integration, the Adviser also began working on other issues that Asadi had to deal with, including trying to help Asadi enrol into college, but due to a lack of understanding around age disputes in educational institutions, this was not without its own challenges.

This was a very difficult time for Asadi; he had trouble sleeping and his mental and physical health was in decline, due to his experiences in his home country and on his journey, and the uncertainty of his situation in the UK. Asadi was admitted to hospital at one stage, but medical professionals were confused about how to treat him as he was neither an adult nor a child.

Asadi still continued to access services at the Refugee Council and other organisations which were of great support to him. His Adviser would provide him with updates on his case and welfare support where possible, but both were frustrated at the fact that the case was taking a very long time to resolve, leaving a vulnerable boy trapped in a cycle of professionals disputing his age, status and entitlement to support.

*in all case studies, names and places have been altered to protect the identity of the young person.

ASADI'S STORY CTD.

The case proceeded to court, which was a traumatising time that brought back painful memories, and Asadi found himself breaking down in tears at the thought of having to share his personal story with strangers. The case was eventually settled out of court when the local authority, once presented with the evidence gathered by Asadi and his Adviser and solicitors, finally accepted Asadi to be a child.

Whilst this is a positive outcome, and we are delighted that Asadi finally had his age accepted, it is appalling that young people such as Asadi continue to be

treated in this manner, with no regard for their capacity, and no sensitivity to the traumatic experiences they have endured. Young people like Asadi will never be able to reclaim their lost childhood. We are pleased that we are able to help children like Asadi and support them where the authorities do not, but we worry about how many other young people like Asadi do not get support that they need.



CHALLENGES

The Age Disputes Project and the Children's Section not only provide direct support to young people whose age is in question, they also advocate for changes in policy which will mean that young people are treated fairly during the age dispute process. It would not be possible to totally eliminate errors in age assessment, as by its very nature it is often challenging for many young people and for those assessing them. The Age Disputes Project also recognises that not every individual whose claimed age is not accepted is in fact a child. However, clearer and fairer policies would help to protect and support those who are in fact children through the system.

Whilst there have been many positive decisions made and some changes which will have a significant impact on the process of assessing age and on how young people are treated during this process, there are still many challenges which remain.

Some key issues lie behind the scenes in the provision of documentation and administrative processes. Home Office record keeping and data has been consistently criticised in independent reports which do not inspire confidence in the government's ability to monitor its adherence to policy. Recent government policy has improved the processes and may mean that the Home Office is better able to record those deemed adult by an Immigration Officer on the basis they appear to be 'significantly over 18', however it remains that new policy often takes time to put into practice.

There are also significant issues with current practice, which affect the number and nature of young people affected by age dispute. Firstly, many young people who claim to be under 18 are not being given the benefit of the doubt, and are being sent into adult accommodation based on decisions often made by officers who are not qualified to make a judgement on someone's age. Another key issue is that when local authorities undertake an age assessment, it is not always conducted in accordance with

guidelines and caselaw, or there will be a note that an age assessment has taken place but no evidence to support its conclusions. It is often stated in these cases that due to the belief that the young person is over 18 they do not require a full age assessment. The Age Disputes Project advocates for the end of such practices and for local authorities to undertake full lawful age assessments for any individual whose age is not accepted.

In meeting these challenges, the Advisers on the Age Disputes Project work hard to build positive relationships with the immigration service and with local authorities, accommodation providers and others, in order to be in a position to use their expertise and advise other organisations on current policy and practice, and to help ensure that young people are considered and treated fairly. Our Adviser in Birmingham has developed a strong working relationship and shared understanding with other local organisations who work to support asylum seekers, and the instances of referrals from these organisations have noticeably increased. This shows that the Age Disputes Project is quickly establishing a strong reputation in areas outside London. However, the fact remains that government policies put in place to protect young people in the asylum system should be advocated for and practiced by all organisations and authorities involved in the process of making decisions on age.

Whilst our Advisers across England continue to make progress with local authorities and other regional organisations, there are still barriers to overcome which have a significant impact on age dispute cases. Challenges with other organisations include a lack of cultural understanding; a lack of training, and increased external pressure to meet financial and other targets. The permanent presence of the Age Disputes Project in Yorkshire and Humber, and the West Midlands, has been effective in establishing the credibility and professionalism of the Project. It has allowed our Advisers to work closely with local authorities and other organisations both to build trust and to raise awareness and sensitivity to the current challenges to decisions on age among young asylum seekers. We hope to lead by example by promoting and following our values and ethos.

Based on the cases referred to the Age Disputes Project, errors often occur because a decision on age is made purely based on appearance. In 2017/18, 41% of cases we supported had had an initial decision made based solely on appearance by Immigration Officers, where it had been decided that the individual was significantly over 18 and did not require an age assessment, despite their claim to be a child. Of these, 89% of concluded cases have resulted in the young person being accepted as a child.

Recent EASO guidelines have continued to reinforce that 'no single method currently available can determine the exact age of a person'¹⁷ and to impress the sometimes subjective nature of determining age.

'However, since the estimation is based purely on physical characteristics and can therefore easily lead to arbitrary, subjective and inaccurate results, extreme caution must be taken when giving weight to such considerations. For this reason, the observation of physical appearances cannot be considered as a method of age assessment in and of

"I have been extremely impressed by the cutting-edge policy work that members of the Project have undertaken, which I have regularly drawn on to inform my legal arguments in cases in this area."

[Barrister]

itself, nor can it be used in isolation since it cannot provide any specific chronological age with certainty.'¹⁸

A more thorough and culturally sensitive practice, which complies with national and international guidance, would help to reduce errors. Vital to this is an understanding of the process and the subjective nature of age decisions, sensitivity to individual circumstances, and the necessity of acting in the best interests of the young person, on the part of those undertaking the assessments or initial interviews. This is something we hope to encourage by continuing to work with a range of stakeholders including the Home Office, local authorities, legal representatives and other organisations, as well as increasing pressure on policy makers to enact changes which would ensure that the process of determining age is both competent and fair.

¹⁷ <https://www.easo.europa.eu/sites/default/files/easo-practical-guide-on-age-assessment-v3-2018.pdf>

¹⁸ <https://www.easo.europa.eu/sites/default/files/easo-practical-guide-on-age-assessment-v3-2018.pdf> p46

OSMAN'S STORY*

When Osman arrived in the UK on the back of a lorry he was taken to the police station, where he told the officer that he was 17 years old. He knew his date of birth, which meant he would turn 18 about seven months later. The police officer called social services but refused permission for the social workers to take Osman into their care, and said they should carry out the age assessment at the police station. Their argument was that Osman had entered the UK illegally and was first and foremost a criminal, not a child, meaning he had to remain at the police station.

The assessing social workers wrote in their report that Osman was very nervous and many of his answers made no sense. Instead of considering that this could be caused by trauma and the intimidating setting, they doubted his credibility and assessed him as over 18 years of age. Osman was sent into the system for adult asylum seekers.

While at Initial Accommodation he found his way to a drop-in for age disputed young people, run by the Refugee Council. It was cold and he had no jacket, no hat or scarf. The Age Dispute Adviser gave him a jacket and a welcome pack, consisting of a rucksack, filled with a hat, a scarf, warm socks, tooth brush, tooth paste, shower gel and a towel. The jacket and welcome pack had been donated to the Refugee Council by a church community. The Adviser also gave him a cheap mobile phone with £10 credit on it, in order that he could stay in contact.

The Adviser took on the case and asked the local authority who had assessed Osman for a copy of the age assessment, as he had not been given one. The local authority insisted that the assessment was lawful, although it had been carried out at the police station, as they said the police officer refused to release Osman for the age assessment. When the solicitor sent a letter before action, they finally agreed to take Osman into care pending a re-assessment.

This took time, and meanwhile Osman had been dispersed to different adult accommodation. He called the Refugee Council Adviser frequently, asking for help, and asking to be housed with other young people and not with adults.

He came into contact with another charity which supported refugees, where a volunteer was concerned for Osman's mental health and called the Adviser at the Refugee Council. Osman told them that he had health problems, there was blood in his stool. The volunteer said he would take Osman to the GP, and described Osman as terrified, asking for food and not wanting to go back to his accommodation.

The GP examined Osman and said that he suspected rape. Osman then told the volunteer that he had been raped by the agent throughout the journey to the UK, right up to his arrival. This was why he was so scared of adult men, and that living with men in adult accommodation terrified him. He was scared to go into the kitchen to make himself food, as the other men could be in the kitchen too. Furthermore, there was no lock on the bathroom door, so Osman did not dare take a shower as men could come into the room.

*in all case studies, names and places have been altered to protect the identity of the young person.

OSMAN'S STORY CTD.

The volunteer asked Osman for his consent to tell the Refugee Council Adviser, who immediately called the assessing authority and made it clear that there were serious safeguarding issues concerning Osman's physical and mental health. They agreed to pay for his train ticket, but insisted that he make his own way to them, as he was nearly 18 years old and should not need to be picked up. Osman was too traumatised to make this journey by himself, so the Age Disputes Adviser organised for a volunteer to take the train with him.

After speaking to Osman with the help of an interpreter, the social workers realised how traumatised he was. After several sessions with him, the social workers accepted his claimed age and said his mental state was that of a 12 or 13 year old. They suspected that not only was he highly traumatised, but that he also had a learning disability. At the health assessment a health professional also said Osman might be on the autistic spectrum.

Osman now lives in a supported placement with other young people. He is supported by an allocated social worker and has an immigration solicitor both of whom are female, and receives further support from a charity that works with survivors of torture and violence. The senior social worker, who initially insisted on the first assessment being lawful and was reluctant to withdraw it, now says they will do everything they can to support Osman.

Several lessons can be learned from Osman's case. Firstly, the initial assessment should not have taken place at a police station. We know now that Osman had undergone an incredibly traumatic experience, and must have felt very unsafe and scared. The fact that his answers did not always make sense was used against him. This shows how important it is that age assessments take place in a safe environment, not immediately upon arrival in the country after a terrible journey.

Additionally, Osman's case also shows how scared and uncomfortable young people can be in adult accommodation, where they share a house with adults they do not know. Many of the young people have suffered different forms of abuse along their journey, often inflicted by adults.

Finally, Osman was sent into the adult system without a copy of his age assessment, which is a regular occurrence. Young people should be in care until they are given a full copy of their age assessment. Even if they do not speak or read English, they have the right to have in writing why their claimed age was not believed. Many local authorities tell them that they can challenge decisions regarding their age, but to do so, they would need a copy of the assessment. A significant amount of time can be lost in securing a copy, without which Advisers would be unable to determine whether the assessment can be challenged or not.

In the Children's Section, we always listen to the young person and act in their best interests, ensuring that we remain open, collaborative and sensitive to each person's journey. In doing so we champion the rights of the young people we support, ensuring that they are treated with humanity and dignity.

CONTINUING OUR WORK

Whilst the scope of the Age Disputes Project has developed significantly since its origins in 2010, its drive and values - to protect and support all those we believe to be children - remain the same. In the last few years the Project has been involved in significant caselaw which has positively influenced practice and policy. Recent guidance on age assessments has begun to reflect some of the values we strive for in our work, and we are pleased to see that increased encouragement for the authorities to act in the best interests of the child, which lies at the core of our ethos and practice, has been clearly outlined and integrated into the recommended age assessment processes¹⁹. The challenge is to ensure that these recommendations and guidelines come to fruition in practice as well as on paper.

The Children's Section works by delivering training on age disputes to external parties including local authorities and other agencies, to influence and inform good practice and to ensure that awareness of current policy is shared with organisations who work to support young refugees. We will continue to advocate for further changes to policy and guidance to ensure that good practice is developed and promoted which seeks first and foremost to protect children and young people navigating the asylum system.

The Project has expanded significantly and takes on a growing number of children. The development of the Project into other areas of the country has helped us to increase our caseload and to reach children who did not previously have access to support. However, there are still too many young people who we simply cannot reach because we do not have the resource. From January – March 2018, we received 80 referrals, of which we have been able to support 59 young people. This shows that the need for the Age Disputes Project remains as great as ever, and we continue to rely on the generosity of our funders in order to be able to maintain the quality and reach of service that we currently provide. Whilst we will continue to support as many people as we can, we recognise that we cannot currently support everyone that needs our help, and hope to see this change in the future.

"Without this Project I wouldn't have been treated fairly, nobody helped me, even though I kept telling people about my age, until the Refugee Council believed me"

[Young person]

¹⁹ <https://www.easo.europa.eu/sites/default/files/easo-practical-guide-on-age-assessment-v3-2018.pdf>

THE AGE DISPUTES PROJECT TEAM

Francesco Jeff

Francesco has been managing the Age Disputes Project since 2010.

Francesco is very experienced at working with age disputed young people and has acted as a litigation friend in a significant number of cases brought before the High Court and Upper Tribunal resulting in judgments²⁰ which have clarified the rights and entitlements of unaccompanied children when encountering the state and local authorities.

"Managing the Age Disputes Project has been one of the most rewarding professional experiences. The Project has dealt with, assisted and worked with over 1200 vulnerable children across the UK since 2010 allowing them to fulfil their potential and integrate into their new lives in the UK. Some of the young people we supported have successfully gone on to qualify as doctors or nurses and many have entered higher education. It is an amazing feeling to know that they are doing well."

"When I first started this Project, I was mainly dealing with children in detention, and my organisation's aim was to bring the detention of children to the end. I am proud and pleased to say that I believe we have almost achieved that. The number of children in detention has decreased by over 80% and the vast majority of cases that our Project now deals with are non-detention cases."

"Over time we have had to extend the Project's scope because of the increasing number of age disputed cases. In 2017/18 we dealt with 283 cases and the numbers are likely to increase this year. In terms of the success rate of young people bringing challenges against decisions made to dispute age, I am pleased to say that we have been successful in the vast majority of cases that we help young people to bring to court, and we will continue to work for these vulnerable children."

Melinda Hiller

Melinda has worked in different settings with vulnerable young people, such as a social institution tackling sexual abuse of children. This has prepared her well to work with the young people at the Age Disputes Project, who are very vulnerable and often traumatised by the experiences back home and during the journey. When their age is not believed, the young people face further stress and anxiety, and often the ADP Adviser will be the only adult in their life who is helping them.

"Working with the Age Disputes Project is challenging in many ways. It can be emotionally difficult as we are dealing with vulnerable young people under a lot of stress, we get to know their stories and their pain. We act on their behalf and negotiate, always trying to get the best possible outcome for our clients: have their claimed age accepted and be looked after."

"When a young person is finally supported and gets access to education, it is the most rewarding work I have ever done."

²⁰ Ali v The Secretary of State for the Home Department [2016] EWHC 1453 (Admin), S v LB Croydon with the Equality and Human Rights Commission intervening [2017] EWHC 265 (Admin), and ZM & SK v Croydon London Borough Council (JR 2567/2016 & 3414/2016)

THE AGE DISPUTES PROJECT TEAM

Helen Clarke

Helen has been volunteering with the Age Disputes Project in Leeds since September 2017. She recently completed her Masters in Law, and is training to become a barrister.

Helen came to volunteer with the Refugee Council because of her passion for doing work that will make a positive difference in the lives of vulnerable individuals.

"Volunteering for the Age Disputes Project, and the opportunity to help young people through a difficult and confusing process, is one of the most rewarding experiences I have had. There are of course young people that we are unfortunately not able to help, and some whose cases are not successful. Every unsuccessful case is difficult for me, because I feel very compassionately about the young people that we work with, and knowing that we have been unable to help a young person is always disappointing. However, every time we manage to help a young person get accepted as a child with the age and date of birth that they believe they are is a success worth celebrating, and that makes the work that we do extremely worthwhile for me."

Yasmin Begum

Yasmin has spent several years working with refugees in and around camps and around the Middle East, gaining valuable knowledge and expertise in this field.

Yasmin started work with the Refugee Council as an Adviser in the Children's Panel, where she worked supporting young people for two years, before joining the Age Disputes Project where she led the establishment and development of the service in Birmingham. Her work in both of these roles has involved supporting many children who were victims of trafficking. The Age Disputes Project in Birmingham is well-reputed and continues to grow and receive more and more referrals. Yasmin's commitment to the young people has resulted in many children receiving the care and protection they need.

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The Refugee Council is one of the leading charities in the UK working directly with refugees, and supporting them to rebuild their lives. We speak up for refugees using our direct work as an evidence base, and seek to ensure refugees have a stronger and more influential voice in decisions that will affect them. We work in collaboration with a range of partners in order to provide the best possible support for our clients.

We are grateful to the generous support of Comic Relief and the Goldsmiths' Company Charity for our work with age disputed children.

Drawings by young people who received support from the Children's Section.

"I am happy with them because if you don't have the Refugee Council you don't have any help."
[Young person]







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